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cases enough to make a contract, and, according to the opinion of the majority, it makes one in this case. The contract is to sell goods and to sign a written paper as evidence, and because one of the parties refuses to sign the paper, *non sequitur* that the other may not prove the contract by other legal evidence.

The New York Court divided in the same way on the same question in 1860. *Pratt* v. *The Hudson River R. R.*, 21 N. Y. 305.

COURT AND JURY. — During the trial of the case of *Cahill* v. *Chicago, Milwaukee & St. Paul Railway Co.*, in the Circuit Court of the United States at Chicago (Chicago Law Journal, January, 1895, p. 4), the judge directed the jury to find a verdict for the defendant. This one of the jurymen refused to do, and he was, as a consequence, ordered into the custody of the marshal. Before the question of contempt, however, came on for hearing, the verdict was accepted by the plaintiff's attorney subject to exceptions. The point raised during the trial was, nevertheless, of such novelty and importance that it received no little discussion in the current papers. The reason why such questions seldom arise is, probably, because judges ordinarily try to avoid coming into conflict with the jury, and generally, in some tactful manner or other, avoid the dispute. Indeed, such finesse is almost always necessary in handling a somewhat unmanageable body like our jury, which is much easier led than driven. In a very similar case in Vermont, for example, the judge told the jury he would not insist if they thought his action wrong, but that they had better consider the situation carefully before coming to any conclusion. They followed his advice, deliberated, and finally went his way. Here, however, no such conciliatory measures were adopted, and the result was a temporary conflict, in which the rights of the jury were substantially involved. It would seem as if *Bushell's Case* (Vaughan, 135, 142, 147–149), decided in 1670, had settled the law on this subject once for all. Indeed, although that decision might well have been regarded as somewhat weakened because it went on a conception of the jury which no longer prevails (Thayer's Cas. on Evidence, 5–19), it has nevertheless been considered undoubted law up to the present time; and wisely so, it would appear. It is only right that the functions of the court, as trier of law, and the jury, as trier of fact, should be carefully distinguished (Thayer's Cas. on Evidence, 143–238), and although the juryman would be undoubtedly justified, legally and morally, in returning a finding of facts which he does not believe in, if so ordered to do, yet it is hard to see what right the judge has to coerce the jury to arrive at his result. An honest man, laboring under a misunderstanding as to the weight and meaning of the words "law and fact" in his oath, might well refuse to tell what he regarded as a gross lie. The advantage of punishing him for so doing is by no means apparent, as such a method is, it would seem, against the usually accepted doctrine, and is at best a useless exercise of authority, when the same result might be as easily accomplished in a more peaceful way.

MALICE. — A point of considerable interest, though not entirely new, has just been decided by Kekewich, J., in the recent English case of *Trollope & Sons et al.* v. *London Building Trades Federation* (11 *The*

Times L. R. 228). The defendant trades union accused the plaintiffs of discriminating against union men, contrary to an agreement with the defendant made by the plaintiffs and other builders. Accordingly, the defendant published and circulated widely a large yellow poster with a "mourning border," headed "Trollope's Black List," giving the names of non-union men employed at the firm's works, and the names of men who had remained on the works after the commencement of a recent strike ordered by the defendant. Messrs. Trollope and several of their employees named in the "black list," brought suit for malicious interference with their business, and moved for an interlocutory injunction on the ground that the act of the defendants tended to coerce the firm's workmen into leaving, to deter others from entering its employ, and in general to persecute the plaintiffs and bring them into odium and contempt with those who might otherwise deal with them. The injunction was granted, and Mr. Justice Kekewich expressly rested his decision on some remarks of Lord Field in the case of *The Grand Mogul Steamship Co.* v. *Macgregor* ('92 App. Cas. 51, 52). In that case Lord Field relied on the opinion of Lord Holt in *Keeble* v. *Heckeringill* (11 East, 574), citing these words: "If the acts complained of, though done in the way and under the guise of competition or other lawful right, are in themselves violent or purely malicious, or have for their ultimate object injury to another from ill-will to him, and not the pursuit of lawful rights," then they are actionable if the plaintiff sustains damage thereby. In the opinion of Kekewich, J., the principal case fell within the lines laid down by Lords Holt and Field. Although the defendants sought remotely some benefit to themselves, their principal motive was to injure the plaintiffs, "and to prevent them from carrying on their ordinary trade or business with the freedom which was the privilege of Englishmen."

The principles of law underlying this decision seem perfectly sound, and the conclusion correct, assuming the circular to have the effect attributed to it by the court. The case belongs to that class of malicious wrongs, not very common, where the damage consists in influencing third persons under no legal duty to the plaintiff. The labor troubles of the past few years have presented us frequently with cases of malicious conduct uncommon in former times, and toward whose legal construction the older books give little help. The result has been a noticeable development of this branch of torts within a very short time. It is now generally accepted that a malicious interference with the plaintiff's vested rights, even if they be of contract only, is actionable. But where the act complained of consists in maliciously influencing persons who have not yet entered into any legal relation with the plaintiff, the law is by no means generally settled yet. Since *Temperton* v. *Russell* ('93, 1 Q B. D. 715), there has been a decided tendency toward making it a tort maliciously to induce others not to deal or contract with the plaintiff. There are numerous decisions in this country recognizing such a principle, and the principal case seems to belong to this class. For the defendants to circulate the poster was not unlawful, in one sense of the word. But where their principal object was to injure the plaintiff, and their own welfare was only remotely considered, the element of damage to the plaintiff would seem to outweigh the benefit to the defendants of freedom to protect and further their interests. It may well be that in cases of this sort the defendants' motives might become material. But in the principal case it hardly seems necessary to go beyond external tests of liability.

Quite aside from the defendants' motives, their act probably exceeded the legitimate bounds of competition.

In 8 HARVARD LAW REVIEW 1., Mr. Justice Holmes emphasized the fact that these cases are after all decided on broad grounds of public policy, and that such policy is determined by our economic experience. That is true of most judicial legislation. Our experience with labor organizations is not as yet very extensive, and the results are not likely to be summed up alike by all judges. Since the principal case a similar decision has been rendered by Kennedy, J. *Flood* v. *Jackson*, Q. B. D., March 5. And an interesting New Jersey case in the Recent Cases, page 510, *infra*, is to the same effect. So that the new cause of action seems to be popular.

COMPARATIVE CITATION OF REPORTS. — The editor of "Legal Bibliography" has compiled some interesting statistics of the frequency with which the judges of a State cite and rely upon foreign reports. His tables show the result of a count made of the citations in the judgments reported in the current volume of each set of State reports, and of the United States Reports, omitting, of course, the citations by each court of its own decisions.

Four jurisdictions are cited beyond comparison more than any others. Two counts, the first taken before the reports of thirteen less important States had been examined, the second the final one, showed the following result: —

	First Count.	Final.
United States	1137	1669
English	1483	1594
New York	1164	1424
Massachusetts	1120	1268
Next in rank { Pennsylvania	446	
Next in rank { California		805

Seven of the States omitted in the first count were recently admitted; the other six were States before 1865 (one was of the original thirteen), but it would seem that the greater part of the additional citations came from the reports of the new States, for the additions make two marked changes; they bring the United States Reports up from a poor third to an easy first, and they bring California up from a tie for ninth place to fifth with a showing sixty per cent better than her next competitor. This seems to point, though not surely, to the establishment of a distinct Western school of jurisprudence, which relies chiefly upon the two sets of reports last named, and it suggests an interesting question whether any tendency to uniformity in State jurisprudence may not be prevented or seriously arrested by the presence of two schools, a Western and an Eastern one.

To present an accurate result from one point of view, the tables should of course have taken into account the small number of citable cases in the reports of the smaller States. If, for instance, instead of sixteen volumes of Rhode Island, there were one hundred and fifty, as there are of Illinois, and the frequency of citation were maintained, Rhode Island would stand ninth, next but one after Illinois, instead of in her present position of thirty-sixth. From the point of view of a purchaser of law books, which is the purpose for which the statistics were compiled, that is just as much her misfortune, although not her fault.